

## MEDICAL CONTESTED CASE HEARING NO.16008

### **DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a total right knee replacement revision with 4 day inpatient stay for the compensable injury of (Date of Injury).

### **STATEMENT OF THE CASE**

A contested case hearing was held on November 23, 2015, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to a revision total right knee replacement with 4 day inpatient stay for the compensable injury of (Date of Injury)?

### **PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Carrier appeared and was represented by RFJ, attorney.

### **DISCUSSION**

Claimant sustained a compensable right knee injury on (Date of Injury). He has undergone a total knee replacement for the compensable right knee injury and a revision total knee replacement on January 28, 2010. Claimant's doctor, BM, MD, has requested preauthorization for a second revision total right knee replacement. On August 5, 2015, Carrier's utilization review agent, AD, MD, recommended that the request be denied because a bone scan had not been done and there was no imaging to confirm loosening of the components. Dr. D stated that there was no clinical indication for another revision surgery because there was a lack of objective evidence of loosening of the prosthesis.

Carrier denied the request and Claimant requested reconsideration of the denial. Carrier submitted the request for preauthorization to a second utilization review agent, DT, MD. Dr. T recommended that the request be denied in light of the absence of clear documentation of loosening of the right knee components.

Carrier's denial of the request for a revision of the total knee replacement was appealed in accordance with the independent review organization (IRO) process under Rule 133.308. C-IRO

Inc. was appointed to act as the independent review organization. On September 15, 2015, the IRO issued its report upholding Carrier's denial of the requested preauthorization for a right total knee revision with 4 day inpatient hospital stay. The IRO physician reviewer wrote that a right knee replacement revision is indicated for findings consistent with significant loosening at the previously implanted components, but no independent imaging studies were submitted for review that would tend to confirm Dr. M's belief that there had been significant loosening of the right knee components. The IRO physician reviewer wrote that "[g]iven the lack of confirmatory evidence in the form of independent imaging studies and taking into account the lack of information regarding the patient's global knee rating scale it's unclear if the patient would require a revision at this time."

At the hearing, Claimant called Dr. M to testify. He confirmed that the x-rays of Claimant's right knee were done in his office and no independent x-rays had been requested or obtained. He noted that, after the first utilization review agent recommended a bone scan, he had requested preauthorization for one, but it had been denied by Carrier. He also testified that he believes that Claimant has aseptic loosening of the components of the implanted right knee prosthesis and that the bone scan was unnecessary; he only ordered it because the first utilization review agent recommended it.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines in making decisions for the treatment of an individual patient. The commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. (Texas Labor Code Section 413.011(e).) Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1). In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code.

Thus, the focus of any health care dispute starts with the health care set out in the ODG. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence. (Division Rule 133.308 (s).)

The ODG provision for a revision total knee replacement, as requested by Dr. M, is:

#### Revision total knee arthroplasty

Recommended for failed knee replacement or internal fixation, as indicated below. Prostheses are generally very durable; however, in some cases failure does occur, requiring a revision of the [total knee replacement]. When assessing the need for revision TKR, conditions such as disabling pain, stiffness, and functional limitation which are unrelieved by appropriate nonsurgical management and lifestyle changes should all be considered. Evidence of progressive and substantial bone loss alone is considered sufficient reason to consider revision in advance of catastrophic prosthesis failure; furthermore, fracture or dislocation of the patella, instability of the components or aseptic loosening, infection, and periprosthetic fractures are also common reasons for total knee revision. (NIH, 2003) (Singh, 2013)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

#### Criteria for Revision total knee arthroplasty:

- Recurrent disabling pain, stiffness and functional limitation that has not responded to appropriate conservative nonsurgical management (exercise and PT);
- Fracture or dislocation of the patella;
- Instability of the components or aseptic loosening;
- Infection;
- Periprosthetic fractures.

Dr. M testified that Claimant has recurrent, disabling pain and aseptic loosening of his right knee prosthesis. He believes that his in-office x-rays provide sufficient evidence to establish the loosening and to warrant the surgery.

There is a difference of medical opinion between Dr. M and the utilization review agents and IRO physician reviewer regarding the necessity for confirmatory imaging studies to establish a loosening of the components of the 2010 total knee replacement. Dr. M believes that it is unnecessary. Drs. T and D and the IRO physician reviewer disagree. The ODG does not specify what evidence of loosening is considered optimal. Under the circumstances, the Hearing Officer

looks to the evidence to determine the level of health care to establish the instability of the components or aseptic loosening that is clinically appropriate under the generally accepted standards of medical practice recognized in the medical community. There was no specific evidence regarding the generally accepted standards in the medical community for a determination of the existence of loosening of the prosthesis in a total knee replacement. It is inferred from the opinions of the doctors involved in the utilization review process (both of whom are orthopedic specialists and one of whom, Dr. T, is a board-certified orthopedic surgeon) and the IRO physician reviewer (identified by C-IRO Inc. as a doctor who is also board certified in orthopedic surgery) that the generally accepted standard of care in determining the loosening of a total knee replacement prosthesis would include a bone scan and multiple imaging studies designed to confirm and quantify such loosening.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See Black vs. Food Lion, Inc.*, 171 F.3rd 308 (5th Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (6) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). With due respect for Dr. M's expertise, the Hearing Officer finds that his testimony does not overcome the findings of the IRO that there is insufficient confirmatory evidence to justify a revision total right knee replacement at this time.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

### **FINDINGS OF FACT**

1. The parties stipulated as follows:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance through Liberty Mutual Insurance Company, Carrier.
  - D. Claimant sustained a compensable injury on (Date of Injury).

- E. Carrier has accepted an injury to Claimant's right knee as a component of the compensable injury.
  - F. As part of the treatment for the compensable right knee injury, Claimant underwent a total knee replacement of the right knee on January 28, 2010.
  - G. The Division appointed C-IRO Inc. as the independent review organization to review Carrier's denial of preauthorization for the requested revision of the total right knee replacement.
- 2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
  - 3. The preponderance of the evidence-based medical evidence in this matter is not contrary to the IRO decision that there is insufficient medical evidence at this time to establish that a revision of the right knee total knee replacement is reasonably required health care for the compensable injury of (Date of Injury).

### **CONCLUSIONS OF LAW**

- 1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
- 2. Venue is proper in the (City) Field Office.
- 3. A revision total right knee replacement with 4 day inpatient stay is not reasonably required health care for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to a revision total right knee replacement with 4 day inpatient stay for the compensable injury of (Date of Injury).

## **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE CO.  
211 EAST 7TH STREET, STE. 620  
AUSTIN, TX 78701-3218**

Signed this 25<sup>th</sup> day of November, 2015.

KENNETH A. HUCHTON  
Hearing Officer